IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3352 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOK ARJANBHAI PARMAR

Versus

DISTRICT MAGISTRATE

Appearance:

MR RD GAGDEKAR for Petitioner

MR SJ DAVE, APP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 21/06/2000

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 18-12-2000 passed by the District Magistrate, Ahmedabad.

2. It is a settled principle of law that in order to

bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, actual date of detention is 26-12-1999. The first point raised by the learned advocate for the petitioner is that in Annexure-D (internal page No.4), detaining authority has categorically mentioned that the statement of the witnesses have been verified by Sub Judicial magistrate, Dholka, but as per the copy supplied by the authority to the detenu which is the part of this petition and which has been annexed at page 132 shows otherwise which has been verified by Dy.S.P. The second point raised by the learned counsel for the petitioner is regarding non-filing of reply. It is submitted that the detenu has submitted a representation to the authority on 16-4-2000 to supply copies of documents. Learned APP for the State, Mr.S.J.Dave has stated after verifying the file that communication has been received by the Home Department on 26-4-2000 through jail and on receipt of the same, on 27-4-2000 Home Department directed to supply the copies as demanded by the petitioner. But State has not filed any affidavit and in absence of that, it is not easy to accept that the representation dated 16-4-2000 has been sent by the jail authority on 20-4-2000 which has been received on 26-4-2000 and it has been decided on 27-4-2000. As per the law laid down by this Court, this is a delay which has not been explained by the State. Even no affidavit has been filed either by the detaining authority or the State of Gujarat. It has been held in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

"Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

Since no affidavit has been filed either by the detaining authority or the State and also since the delay has not been explained by the State, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

4. The petition is allowed. The impugned order of detention dated 18-12-2000 passed by the District Magistrate, Ahmedabad against the detenu is hereby quashed. The detenu-Ashok Arjanbhai Parmar is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute with no order as to costs.

(R.P.DHOLAKIA,J.)

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